



TEXAS FORENSIC SCIENCE COMMISSION

Justice Through Science

1700 North Congress Ave., Suite 445
Austin, Texas 78701

MEMO

DATE: February 27, 2018

TO: Licensing Advisory Committee and Members of the Forensic Science Commission

FROM: Lynn Garcia, General Counsel
Leigh Savage, Associate General Counsel

RE: Summary of Adjudication of Comments on New Rules to 37 Tex. Admin. Code Chapter 651 to add Subchapter C related to Forensic Analyst Licensing Program for comment period December 15, 2017 to January 18, 2018.

This memorandum provides a brief summary of the written comments received by Commission staff regarding the proposed rules for the licensing program during the period from December 15, 2017 to January 18, 2018. Also provided is a summary of the Licensing Advisory Committee's (LAC) and/or Forensic Science Commission's (Commission or FSC) consideration of each item, with an explanation of resulting changes to the proposed rules where applicable.

The purpose of this memorandum is to provide guidance for members of the public potentially affected by the proposed rules. Where necessary and appropriate, the Commission provides its interpretation of the rules and information regarding the statutory provisions upon which the rules are based. However, ultimate conclusions regarding statutory interpretation may only be made by a court of competent jurisdiction. The Commission and its staff are prohibited from providing legal advice.

1. Date Received: December 14, 2017
Commenter: Lisa Fondren
Laboratory: Fondren Forensics

Comment: 651.206 (a) exemption for non-proficiency tested personnel. Fondren Forensics has a technical reviewer who is not required to be proficiency tested by the laboratory's accrediting body. Does this individual have to get a license because he/she is performing technical review?

Response: Yes, as the rule is stated, this person would need a license because he or she is technically reviewing forensic analysis. See definition of 'forensic analyst' in Tex. Code Crim. Proc. art. 38.01 § 4-a(2) – "a person who on behalf of a crime laboratory . . . *technically reviews* or performs forensic analysis for a court or crime laboratory." Technical review is a critical component of the quality process. Because the statute explicitly requires technical reviewers to obtain a license, the rules under 651.206 state that technical reviewers must obtain a license regardless of whether the laboratory's accrediting body requires proficiency testing for that individual. The exception from the license requirement for individuals who are not required to be proficiency tested by the laboratory's accrediting body is limited to those employees who play a support role in the laboratory, not those who are responsible for key components of scientific interpretation and/or quality control such as a technical reviewer.

2. Date Received: December 14, 2017
Commenter: Greg Hilbig/Brady Mills
Laboratory: Texas Department of Public Safety

Comment: Toxicologist (Alcohol) education requirement after January 1, 2019 is for three-semester credit hours in interpretive science (and three in analytical chemistry). Some chemists may not have three hours of interpretive science. The requirement for Toxicology Analysts after January 1, 2019 is two three-semester credit hour courses in analytical and/or interpretive sciences. Consider adjusting the requirement for Toxicologist (Alcohol) to the same requirement.

Response: The Toxicology analyst categories have been revised into three categories. One is Toxicology Analyst (Blood Alcohol only, Non-interpretive), the second is Toxicology (General, Non-interpretive) and the third is Toxicology (Interpretive). The specific coursework requirements for Toxicology Analyst (Blood Alcohol only, Non-interpretive) have been changed to mirror the coursework requirements for seized drugs analysts. Therefore, an individual transitioning from seized drugs to blood alcohol analysis would not be required to meet any additional chemistry coursework requirements beyond what is required for seized drugs.

Additionally, the specific coursework requirements for Toxicology Analyst (General, Non-Interpretive) have been changed to: sixteen-semester credit hours (or equivalent) in college-level general and organic chemistry *including* two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive sciences. The specific coursework requirements for Toxicology Analyst (Interpretive) have been changed to: sixteen-semester credit hours (or equivalent) in college-level general and organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry, and one three-semester credit hour (or equivalent) college-level course in interpretive science.

Finally, in recognition of the concern that some experienced analysts may not have the requisite chemistry coursework when either moving to Texas or promoting from toxicology analyst to interpretation (alcohol or general), the rules provide two alternative pathways for obtaining a license after January 1, 2019 for analysts who may be unable to fulfill the specific coursework requirements. One is to obtain a provisional license (for a period of one year) until the requisite coursework is completed. The second is to apply for a waiver of specific coursework requirements as provided for in §651.207(f) of the licensing rules. The waiver requires the applicant to have (1) at least 5 years of experience in the discipline; or (2) certification by a recognized national certification body; and (3) documented laboratory-sponsored training in the subject areas covered by the specific coursework requirements.

3. Date Received: December 15, 2017
Commenter: Emily Esquivel
Laboratory: Jefferson County Regional Crime Lab

Comment: Specific coursework requirements of the licensing rules prevent employees from moving laterally after January 1, 2019 (e.g., a biology major could not become a blood alcohol toxicologist or a biological screener could not move to blood alcohol).

Response: Staff proposed adding the following language to address this issue:

“A licensee who is granted a license before January 1, 2019 who adds toxicology analysis limited to blood alcohol to the scope of his or her license after January 1, 2019 will not be required to fulfill the specific

college-level coursework requirements for toxicology analyst that will take effect after January 1, 2019. (*See* §651.207(d)(7)(C)).”

The reason staff suggested limiting the language to individuals who add blood alcohol to an existing license is because that is the scenario most commonly described by laboratories. However, some members of the LAC are concerned that this proposed language is too broad and would allow individuals without adequate foundations in chemistry to perform blood alcohol analysis. Therefore, the language will be discussed at the next LAC meeting on March 19, 2018 and a recommendation will be made to the full Commission at that time.

4. Date Received: January 4, 2018
Commenter: Veronica Hargrove
Laboratory: Bexar County Medical Examiner’s Office

Comment: Changes proposed in the licensing rules will have a fiscal impact to both the county and personnel involved and the requirements will hinder future recruitment/employment.

Response: The Commission has determined that for each year of the first five years the proposed rules will be in effect, the fiscal impact on state or local governments will be minimal to neutral. While it is true that the majority of the individuals subject to the licensing requirement are employees of state, county or city laboratories, the rules do not impose any fee or other financial requirement on any laboratory. The proposed fees associated with the license are to be paid by individual licensees as they are in numerous other professions under Texas law. The fees are expressly authorized by statute for the sole purpose of administering the State's Forensic Analyst Licensing Program. *See* TEX. CODE CRIM. PROC. art. 38.01 § 4-a. While a laboratory may choose to pay this fee for its employees it is not a requirement of the proposed rules. Some laboratories may incur minor administrative costs associated with implementing the licensing requirements imposed by the proposal. Examples include time spent proctoring the required general forensic exam for employees (time for personnel either administering or taking the exam), or should laboratories so choose, in providing examiners time off to study for the examination. The Commission is required by statute to create a licensing program for analysts that includes successful completion of education requirements, specific coursework requirements and experience, successful completion of an examination, and proficiency testing requirements as set forth in the proposed rules. The Commission considered the costs that may be associated with the administration of the exam and in giving employees time for either the exam or meeting the requirements set forth and there is no practical way to avoid some administrative participation on the part of the laboratories while still meeting the requirements of the program's enabling statute. For example, if the Commission were to administer the examination, employees would need to travel to an examination site which would entail more time away from the bench and a higher fee associated with external administration of the examination. With regard to the other requirements, all laboratories who have employees subject to the licensing requirements proposed herein already maintain most of the information required of analysts in order to meet current accreditation requirements. Thus, the economic impact on laboratories of submitting information they are already required to maintain pursuant to accreditation requirements is minimal to neutral.

The Commission does not anticipate any effect on local employment or the local economy as a result of the proposal. The licensing rules and requirements proposed herein are written so that all current forensic analysts can meet the requirements to obtain a license. No one currently employed will be excluded from their employment status by the proposed rules. Specific education and coursework requirements are higher for those who apply for a license after January 1, 2019. Some laboratories expressed concern regarding their ability to hire qualified lateral transfers or out-of-state applicants that cannot meet the more stringent

coursework requirements. In response to these concerns, the rules provide a waiver process to address out-of-state lateral hiring, internal promotion and addition of forensic disciplines after January 1, 2019.

Comment: Postmortem toxicology testing should be exempt from licensing requirements.

Response: The Commission submitted an Attorney General opinion request regarding the question of whether postmortem toxicology is covered by the statute. If it is not, the licensing requirement will not apply to analysts who perform postmortem toxicology assuming they do not perform any other types of toxicology covered by the statute. Staff will notify parties when the Attorney General publishes his response to the opinion request.

Comment: Specific requirements beyond a “baccalaureate or advance degree in a chemical, physical, biological science or forensic science” should be left up to the accrediting body and employer. Specific coursework requirements will unnecessarily impact the laboratories’ hiring potential.

Response: For analysts currently employed, specific coursework requirements are the same as what the laboratory’s accrediting body requires. For analysts applying after January 1, 2019, the rules provide three pathways to obtain a license: 1) complete the required coursework prior to application; 2) obtain a provisional license (for a period of one year) until the requisite coursework is completed; or 3) apply for a waiver of specific coursework requirements for lateral hires and promoting analysts provided for 651.207(f) of the licensing rules. The waiver requires the applicant to have (1) at least 5 years of experience in the discipline; or (2) certification by a recognized national certification body (e.g., ABFT); and (3) documented laboratory sponsored training in the subject areas covered by the specific coursework requirements.

Comment: The requirement for forensic science degrees is not specific enough as to which degrees it applies to.

Response: 651.207(7)(D) provides that forensic science degrees are acceptable provided the degree either comes from a FEPAC-accredited program or meets the minimum curriculum requirements pertaining to natural science core courses and specialized courses set forth in FEPAC accreditation standards. For answers to questions about specific programs, degrees, and courses, please refer to the FEPAC website—<http://fepac-edu.org/>.

Comment: Knowledge-based competency requirements have not been provided, need dates of availability.

Response: Knowledge-based competency components are not meant to dictate laboratory training programs or measure any individual’s technical competency but rather to provide a baseline for consistent minimum subject areas in training programs across laboratories. The lists are currently being revised to reflect changes made to the categories of licenses as outlined in the licensing rules and will be made available after the next licensing meeting, March 19, 2018. The training subject areas may be revised in the future to incorporate OSAC standards as those standards are published to the Registry. For situations in which a laboratory does not train on a certain subject because the laboratory does not perform analytical work in that area, the laboratory designee may so certify using a certification form provided by the Commission.

Comment: Proficiency testing requirements have not been provided, dates of availability needed.

Response: Proficiency testing is only required to the extent it is already required by the laboratory’s accrediting body. Please refer to your laboratory’s accrediting body proficiency testing requirements.

Comment: Additional information is needed regarding the legal and professional responsibilities update as well as the continuing education requirements. Legal responsibility training is not applicable to postmortem toxicology laboratories.

Response: The references in this comment apply to requirements for renewal of a forensic analyst license after the person has been licensed for two years from the date of the licensee's original license. Training in legal and professional responsibility will be provided online by the Commission well in advance of the first license renewal date. Continuing forensic education will include a variety of options (e.g., recognized professional conferences, in-house training, online training, etc.) Additional detail regarding options for fulfilling continuing education requirements will be provided before any of these components take effect.

The assertion that legal responsibility training is not applicable to postmortem toxicology laboratories is only true if the postmortem toxicology analysts never testify in criminal cases. Training on legal issues in criminal cases (especially the disclosure obligations under Article 39.14(h) of the Texas Code of Criminal Procedure) is critical for any expert witness in any criminal case, *regardless of whether the analytical work was originally requested by a medical examiner or a law enforcement agency*. With respect to the overall applicability of the licensing requirement to postmortem toxicology, *see* prior response regarding attorney general opinion request related to postmortem toxicology.

Comment: In order to comply with the requirements and maintain a working laboratory, the Commission needs to have a timeline of when licenses and when provisional licenses are approved. In order not to hinder the laboratory, the Commission needs to issue provisional licenses within thirty days of application.

Response: The Commission plans to issue licenses for all applicants applying by published deadlines in 2018 prior to the January 1, 2019 deadline. For those applying after January 1, 2019, the Commission will issue licenses to applicants with complete applications within thirty days or less depending upon the type of license for which they are applying and whether any consideration/waiver of requirements is requested.

Comment: Is the ineligibility due to criminal conviction provision in the rules purely at the discretion of the Commission or is the employer allowed input? What type of criminal conviction is disqualifying and is there any time limitation?

Response: The licensing rules related to criminal convictions are taken directly from the requirements of the Texas Government Code, Chapter 2001. Consideration of the different elements outlined in the rules is at the discretion of the licensing advisory committee and appealable to the full Commission.

Comment: The Code of Professional Responsibility is beyond the scope of a Forensic Analyst License, should be left to the employer and accrediting agency.

Response: The Commission and the LAC disagree with this comment. The Texas legislature required the Commission to determine the qualifications for a forensic analyst license and the Commission determined adherence to the Code of Professional Responsibility is one component of those requirements and is integral to its overall responsibility to advance the integrity and reliability of forensic science in Texas. Many other professions including those administered by the Judicial Branch Certification Commission of the Office of Court Administration (the administrative agency to which the FSC is attached) have professional codes as part of their licensing requirements, so this rule is in keeping with rules for other similar programs.

5. Date Received: January 15, 2018
Commenter: Aliece Watts
Laboratory: NMS Labs, Inc.

Comment: What is knowledge-based competency?

Response: The knowledge-based competency lists are currently being revised to reflect changes made to the categories of licenses as outlined in the licensing rules and will be made available after the next licensing meeting, March 19, 2018. Required knowledge-based competency components are not meant to dictate laboratory training programs or measure any individual's technical competency but rather to provide a baseline for consistent minimum subject areas in training programs across laboratories. The subject area training lists may be revised in future to incorporate OSAC standards as those standards are published to the Registry. For situations in which a laboratory does not train on a certain subject because the laboratory does not perform analytical work in that area, the laboratory designee may so certify using a certification form provided by the Commission.

Comment: What is mandatory legal and professional responsibility training? Please provide specifics. How does this apply to technicians?

Responses: The references in this comment apply to requirements for renewal of a forensic analyst license after an individual has been licensed for two years from the date of the licensee's original license. Training in legal and professional responsibility will be provided online by the Commission well in advance of the first license renewal date.

Comment: Are postmortem toxicologists exempt from the licensing requirements?

Response: See answer related to outstanding Attorney General Opinion request in 4 above.

Comment: What are continuing forensic education requirements?

Response: This comment applies to requirements for renewal of a forensic analyst license after the person has been licensed for two years from the date of the licensee's original license. Continuing forensic education will include a variety of options (e.g., recognized professional conferences, in-house training, online training, etc.) Additional detail regarding options for fulfilling continuing education requirements will be provided before any of these components take effect.

Comment: Provide clarification on how licensure after 2019 will occur. Will all analysts register in 2019 with renewal in 2021? Will someone hired in 2020 be renewing in 2022 or will they renew in 2021 with everyone else?

Response: Licenses will be granted upon successful completion of the application for a period of two years from the date the license is granted. Licenses may be renewed up to 90 days in advance of the expiration of the license.

Comment: The financial impact is not insignificant. Our cost of licensing and administration of the licensing process will have to be rolled into the cost of testing and any associated contracts.

Response: The fiscal impact analysis required of state agencies implementing rules like the licensing program requires justification of any impact on state and local governments and small and/or microbusinesses with less than 100 employees. While we don't believe NMS falls into either of these categories, we have provided the following explanation for the potential impact as reflected in the rule preamble:

The Commission expects any economic impact to small or micro businesses to be minimal. The Commission accredits a total of 95 laboratories located in and outside of Texas whose individual employees are subject to the licensing requirements set forth in these proposed rules. Forty-three of those laboratories are located in Texas, and 11 of the 43 laboratories are private laboratories (non-publicly funded) that could possibly be considered small or micro businesses. The proposed fees associated with the license are to be paid by individual licensees as they are in numerous other professions under Texas law. The fees are expressly authorized by statute for the sole purpose of administering the State's Forensic Analyst Licensing Program. *See* TEX. CODE CRIM. PROC. art. 38.01 § 4-a. While a laboratory may choose to pay this fee for its employees it is not a requirement of the proposed rules. Some laboratories may incur minor administrative costs associated with implementing the licensing requirements imposed by the proposal. Examples include time spent proctoring the required general forensic exam for employees (time for personnel either administering or taking the exam), or should laboratories so choose, in providing examiners time off to study for the examination. The Commission is required by statute to create a licensing program for analysts that includes successful completion of education requirements, specific coursework requirements and experience, successful completion of an examination, and proficiency testing requirements as set forth in the proposed rules. The Commission considered the costs that may be associated with the administration of the exam and in giving employees time for either the exam or meeting the requirements set forth and there is no practical way to avoid some administrative participation on the part of the laboratories while still meeting the requirements of the program's enabling statute. For example, if the Commission were to administer the examination, employees would need to travel to an examination site which would entail more time away from the bench and a higher fee associated with external administration of the examination. With regard to the other requirements, all laboratories who have employees subject to the licensing requirements proposed herein already maintain most of the information required of analysts in order to meet current accreditation requirements. Thus, the economic impact on laboratories of submitting information they are already required to maintain pursuant to accreditation requirements is minimal to neutral.

The licensing rules and requirements proposed herein are written so that all current forensic analysts can meet the requirements to obtain a license. No one currently employed will be excluded from their employment status by the proposed rules. Specific education and coursework requirements are higher for those who apply for a license after January 1, 2019. Some laboratories expressed concern regarding their ability to hire qualified lateral transfers or out-of-state applicants that cannot meet the more stringent coursework requirements. In response to these concerns, the rules provide a waiver process to address out-of-state lateral hiring, internal promotion and addition of forensic disciplines after January 1, 2019.

Comment: Will we no longer have the flexibility to transition someone already employed into another section of the laboratory because of education restrictions?

Response: For analysts applying after January 1, 2019, the rules provide three pathways to obtain a license: 1) complete the required coursework prior to application; 2) obtain a provisional license (for a period of one year) until the requisite coursework is completed; or 3) apply for a waiver of specific coursework requirements for lateral hires and promoting analysts provided for 651.207(f) of the licensing rules. The waiver requires the applicant to have (1) at least 5 years of experience in the discipline; or (2) certification by a recognized national certification body; and (3) documented laboratory sponsored training in the subject areas covered by the specific coursework requirements.

6. Date Received:	January 17, 2018
Commenter:	Elizabeth Todd
Laboratory:	Southwestern Institute of Forensic Sciences

Comment: Toxicology analyst (interpretation) educational/specific coursework requirements are too stringent after January 1, 2019—the lab’s own training program already ensures staff are properly and adequately trained to perform all aspects of their job duties including interpretation.

Comment: Delete references to Toxicologist (Alcohol) and Toxicologist (General).

Response: The Toxicology analyst categories have been revised into three categories. One is Toxicology Analyst (Blood Alcohol only, Non-interpretive), the second is Toxicology (General, Non-interpretive) and the third is Toxicology (Interpretive). The specific coursework requirements for Toxicology Analyst (Blood Alcohol only, Non-interpretive) have been changed to mirror the coursework requirements for seized drugs analysts. Therefore, an individual transitioning from seized drugs to blood alcohol analysis would not be required to meet any additional chemistry coursework requirements beyond what is required for seized drugs.

Additionally, the specific coursework requirements for Toxicology Analyst (General, Non-Interpretive) have been changed to: sixteen-semester credit hours (or equivalent) in college-level general and organic chemistry *including* two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive sciences. The specific coursework requirements for Toxicology Analyst (Interpretive) have been changed to: sixteen-semester credit hours (or equivalent) in college-level general and organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry, and one three-semester credit hour (or equivalent) college-level course in interpretive science.

Finally, in recognition of the concern that some experienced analysts may not have the requisite chemistry coursework when either moving to Texas or promoting from toxicology analyst to interpretation (alcohol or general), the rules provide two alternative pathways for obtaining a license after January 1, 2019 for analysts who may be unable to fulfill the specific coursework requirements. One is to obtain a provisional license (for a period of one year) until the requisite coursework is completed. The second is to apply for a waiver of specific coursework requirements as provided for in §651.207(f) of the licensing rules. The waiver requires the applicant to have (1) at least 5 years of experience in the discipline; or (2) certification by a recognized national certification body; and (3) documented laboratory-sponsored training in the subject areas covered by the specific coursework requirements.

7. Date Received:	January 17, 2018
Commenter:	Susan Howe
Laboratory:	Tarrant County Medical Examiner’s Office/Texas Association of Crime Lab Directors

Comment: Since “collection” is mentioned as a category of trace analysis, does anyone collecting trace evidence need to be licensed as a trace analyst (e.g., DNA analysts collecting hairs from clothing/bedding for subsequent trace exam).

Response: All references to “collection” were removed in response to this comment and to avoid confusion.

Comment: Does the statistics requirement for Materials (Trace) post-2018 apply to just the chemical analysis categories?

Response: No, language was changed in the rules to make this clearer.

Comment: Question regarding wording of the fee due each year.

Response: The rules have been revised to make renewal fees due every two years. No annual fee is required now, but a renewal fee is due upon renewal of the analyst's licensee—two years from the date the license was last issued or renewed.

Comment: Will an analyst who is licensed in a particular discipline prior to Jan 1, 2019 then need to meet the post-2019 educational/coursework requirements if they add another discipline (or category of analysis within the same discipline) after 2018? Do the deadlines apply to the analyst's initial license, or to the discipline/category of testing? Wording suggests they apply to the discipline/category, which may be problematic especially for smaller labs utilizing and training current analysts in multiple disciplines and categories of testing.

Response: For analysts applying after January 1, 2019, the rules provide three pathways to obtain a license: 1) complete the required coursework prior to application; 2) obtain a provisional license (for a period of one year) until the requisite coursework is completed; or 3) apply for a waiver of specific coursework requirements for lateral hires and promoting analysts provided for 651.207(f) of the licensing rules. The waiver requires the applicant to have (1) at least 5 years of experience in the discipline; or (2) certification by a recognized national certification body (e.g., ABFT); and (3) documented laboratory sponsored training in the subject areas covered by the specific coursework requirements.

Additionally, staff proposed adding the following language to address concerns raised about the ability of analysts to transfer from one discipline (e.g., seized drugs) to blood alcohol after January 1, 2019:

“A licensee who is granted a license before January 1, 2019 who adds toxicology analysis limited to blood alcohol to the scope of his or her license after January 1, 2019 will not be required to fulfill the specific college-level coursework requirements for toxicology analyst that will take effect after January 1, 2019. (See §651.207(d)(7)(C)).”

The reason staff suggested limiting the language to individuals who add blood alcohol to an existing license is because that is the scenario most commonly described by laboratories. However, some members of the LAC are concerned that this language is too broad and would allow individuals without adequate foundations in chemistry to perform blood alcohol analysis. Therefore, the language will be discussed at the next LAC meeting on March 19, 2018 and a recommendation will be made to the full Commission at that time.

Comment: Although the Materials (Trace) coursework requirements recognize that the chemical analysis categories of testing should appropriately carry some additional educational requirements, the overall minimum education requirements do not reflect this same distinction. We have a latent prints examiner that has undergone extensive training for footwear/tire tread examinations over the last several years. He will be excluded from participation in this discipline even if he applies prior to 2019 as he does not have a college degree.

Response: In response to this comment, the rules provide an exception from the minimum education requirements and from the specific coursework requirements for Materials (Trace) analysts performing only impression analyses such as footwear/tire. See 651.207(c)(10) and (d)(7)(D).

8. Date Received: January 17, 2018
Commenter: Drs. Warren Samms and Teresa Gray
Laboratory: Harris County Institute of Forensic Sciences

Comment: Requiring university accreditation by a national accrediting body recognized by the U.S. Department of Education is more stringent than ASCLD/LAB or ANAB standards.

Response: If the concern here is with respect to exclusion foreign degrees, that issue has been addressed (see below). With respect to U.S. degrees, the Commission and LAC made no additional changes because they agree U.S.-based degrees should come from accredited universities regardless of whether ASCLD/LAB-ANAB specifies the same.

Comment: Foreign-education degrees are excluded.

Response: Rules have been changed to recognize foreign degrees. *See* 651.207(c)(12).

Comment: Toxicology, DNA and Firearms disciplines have explicitly stated technician roles. Any discipline in forensic science may use technicians.

Response: The rules have been revised to include a technician category of license for every forensic discipline.

Comment: As currently defined, there appears to be a large amount of overlap between (1) technician roles (which perform “basic analytical functions”) and individuals who perform support functions that do not require participation in testing (§651.206(a)) making it difficult to determine which individuals require licensing and which do not, as the definitions are unclear.

Response: The Commission has added some language to provide further clarity to both the definition of support personnel outlined in §651.206 and to the definition of technician in §651.203(c). To some extent, laboratory management and their employees must exercise judgment in determining which category is most appropriate based upon an individual’s job responsibilities. The Commission will endeavor to assist laboratories with this process upon request.

Comment: The heading of §651.203 uses the term “procedures.” Procedure is defined by ISO1700 as a specified way to carry out an activity or process. The licensing rules apply to individuals, not the processes they perform.

Response: The Commission removed the word “procedures” from the title to avoid any confusion.

Comment: It is unclear whether an analyst who is trained in multiple disciplines (ex. A drug chemist who also performs toxicology testing) must apply for and carry multiple licenses or whether it is a single license with multiple disciplines authorized.

Response: Licensees will have one forensic analyst license with a defined scope limiting the license to a discipline (or disciplines) as appropriate based on the application. Multiple disciplines may be added to a single license as long as the analyst meets the requirements set forth in the rules to obtain a license for the particular discipline or disciplines.

Comment: It is not clear if a licensed analyst who is subsequently trained in a new area must apply for a new license.

Response: The licensee will apply to the Commission to add the discipline or category of analysis to the scope of his/her existing license and submit all applicable documentation supporting the requirements to obtain a license for the particular category of analysis he/she wishes to add.

Comment: The current language requires an associate’s degree for a toxicology technician, depending on the nature of the technician’s responsibility, formal education beyond high school is likely unnecessary.

Response: The LAC concluded a toxicology technician should be required to have a minimum of an associate's degree or equivalent, which is carried over from guidance previously issued by SWGTOX. If an applicant does not meet the minimum education qualifications required of the rules, the Commission has provided a procedure in 651.207(k) of the rules to address the issue and provide opportunity for the applicant to appeal any denial of his/her application based on nonfulfillment of a degree requirement.

Comment: By requiring specific college coursework, the Committee will inadvertently prohibit otherwise competent and experienced analysts from practicing forensic science or promoting in a particular discipline in Texas after 2018 without providing a reasonable mechanism for analyst to gain the prerequisite courses and the current language describes specific course requirements beyond what is required by forensic accrediting bodies. Moreover, the required course titles create confusion about which courses qualify. What information must the applicant provide to show equivalency and who makes the determination, the lab or the Commission?

Response: The Toxicology analyst categories have been revised into three categories. One is Toxicology Analyst (Blood Alcohol only, Non-interpretive), the second is Toxicology (General, Non-interpretive) and the third is Toxicology (Interpretive). The specific coursework requirements for Toxicology Analyst (Blood Alcohol only, Non-interpretive) have been changed to mirror the coursework requirements for seized drugs analysts. Therefore, an individual transitioning from seized drugs to blood alcohol analysis would not be required to meet any additional chemistry coursework requirements beyond what is required for seized drugs.

Additionally, the specific coursework requirements for Toxicology Analyst (General, Non-Interpretive) have been changed to: sixteen-semester credit hours (or equivalent) in college-level general and organic chemistry *including* two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive sciences. The specific coursework requirements for Toxicology Analyst (Interpretive) have been changed to: sixteen-semester credit hours (or equivalent) in college-level general and organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry, and one three-semester credit hour (or equivalent) college-level course in interpretive science.

Finally, in recognition of the concern that some experienced analysts may not have the requisite chemistry coursework when either moving to Texas or promoting from toxicology analyst to interpretation (alcohol or general), the rules provide two alternative pathways for obtaining a license after January 1, 2019 for analysts who may be unable to fulfill the specific coursework requirements. One is to obtain a provisional license (for a period of one year) until the requisite coursework is completed. The second is to apply for a waiver of specific coursework requirements as provided for in §651.207(f) of the licensing rules. The waiver requires the applicant to have (1) at least 5 years of experience in the discipline; or (2) certification by a recognized national certification body; and (3) documented laboratory-sponsored training in the subject areas covered by the specific coursework requirements.

With respect to the question regarding equivalency, Commission staff will make initial determinations on coursework with questions directed to the LAC for resolution. This may require additional communication with the laboratory and/or applicant. Possible methods of establishing equivalency may include review of course syllabus and/or affidavit from instructor, as was done when the QAS requirements first took effect for DNA analysts and laboratories.

Comment: While mandatory training topics are discussed in the licensing requirements, a proposed list has not been made available for comment. Regardless, specifying technical training elements suggests the Committee is attempting to dictate a laboratory's training program without considering the techniques and services provided by the particular lab. Furthermore, attesting to a list does not guarantee a thorough

understanding of one's forensic discipline nor does it ensure an individual's technical competence with respect to the list. Remove the list of knowledge-based competency requirements until OSAC standards/guidelines are published.

Response: The knowledge-based competency lists are currently being revised to reflect changes made to the categories of licenses as outlined in the licensing rules and will be made available after the next licensing meeting, March 19, 2018. Required knowledge-based competency components are not meant to dictate laboratory training programs or measure any individual's technical competency but rather to provide a baseline for consistent minimum subject areas in training programs across laboratories. The subject area training lists may be revised in future to incorporate OSAC standards as those standards are published to the Registry. For situations in which a laboratory does not train on a certain subject because the laboratory does not perform analytical work in that area, the laboratory designee may so certify using a certification form provided by the Commission.

Comment: Clarity need on the expiration date of the license with regard to birthdates.

Response: The Commission has changed the license cycle to two years from the date the license is granted or renewed to prevent any confusion related to the birthdate deadlines.

9. Date Received:	January 17, 2018
Commenter:	Margaret Beamer
Laboratory:	NMS Labs, Inc.

Comment: NMS Tox Labs has several non-degreed analysts that were grandfathered in by ANAB's requirements. Beamer hopes Texas will accept the accrediting agency's rules as it would be career limiting to people who have been performing at an analyst level for 25+ years, are competent in their jobs, but would not be allowed to handle Texas samples after 1/1/19 because they don't meet the education requirements.

Response: Toxicology analysts are required to have a bachelor's degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university. If an applicant does not meet the minimum education requirements, the Commission has provided a procedure in §651.207(k) of the rules for an opportunity to request Commission consideration. The fact that the analysts were grandfathered by the accrediting body would certainly be a factor worthy of consideration. The Commission has also provided an option to obtain a provisional license (for a period of one year) until the requisite degree is completed for those who wish to pursue the degree requirement.